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10/560,472	12/12/2005	Jean-Louis Desjoyaux	1759-213	3145

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ALBANY, NY 12203

EXAMINER

FONSECA, JESSIE T

ART UNIT	PAPER NUMBER
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3633

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/560,472	Applicant(s) DESJOYAUX ET AL.	
	Examiner JESSIE FONSECA	Art Unit 3633	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 October 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 October 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

Claims 10-11 and 18-19 are objected to because of the following informalities:

With regards to claims 10-11: Claim 11 appears to be a duplicate of claim 10.

With regards to claims 18-19: The limitation "The panel according to" found in line 1 of each claim is improper, as independent claim 11 is directed to a method of producing a panel rather than a panel. Appropriate correction is required.

Drawings

The drawings were received on 10/26/07. These drawings are acceptable.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,590,493) in view of Jerit (US 3,667,187), and in further view of Laven (US 4,124,907).

With regards to claim 1: Wilson discloses a panel (10) having a prefabricated structure having a quadrangular general shape with a peripheral squared framework delimiting vertical assembly flanges (24, 26) and upper and lower horizontal flanges (34, 42) (fig.1), wherein:

the panel (10) is made of plastic (polypropylene – col. 1, lines 57-62) having a thickness between 1/8" (0.31 mm) and 1/2" (12.7 mm), which falls within the approximate range of 7 to 8 mm, with a plurality of stiffening ribs (30) overhanging an outer face of the panel (10) (fig. 4). It is further disclosed the base of the ribs (30) being approximately the same thickness as the panel (fig. 2). It would have been obvious to one of ordinary skill in the art to employ a thickness of 6 to 7 mm in order to provide thickness uniformity with the rest of the panel.

Wilson fails to disclose the length of the panel is between 1000 mm and 2000mm. However, Jerit discloses panel (10) for tank having a length of 74 inches (1879.6 mm) (col. 1, lines 37-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Jerit to panel having length between 1000mm and 2000mm as taught by Jerit, in order to provide a panel that is sized for ease of transport, handling, and installation.

Wilson, in view of Jerit, discloses everything previously mentioned except for the upper horizontal flange has, in its thickness, a profiled groove. However, Laven discloses a upper horizontal flange, has in its thickness, profiled groove (150) for receiving the upper edge of a liner sheet (106) (fig. 11 and col. 6, line 66 – col. 7, line 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention is made to modify the panel of Wilson, in view of Jerit, to include a profile groove within the thickness of the horizontal flange as taught by Lavan, in order to provide a means of securing a pool liner.

As per the modification, the profiled groove is capable of engagement and clamping of a protective sheet or liner covering an inner face of said panel. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 2: Wilson, previously modified by Jerit and Laven, further disclose the vertical flanges (24, 26) have complementary arrangements (fig. 4), which is capable of coupling with adjacent panels in order to produce a closed structure of the pool. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 3: Wilson, previously modified by Jerit and Laven, further disclose the horizontal flange (42) has arrangements, which is capable of being engageable with anchoring members for anchoring in a ground portion. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 4: Wilson, previously modified by Jerit and Laven, further disclose the ribs (30) are formed vertically on the outer face of said panel (10) (fig. 1).

With regards to claim 5: Wilson, previously modified by Jerit and Laven, further disclose the horizontal upper edge of the outer face of said panel delimits a strip (52). formed from a plurality of ribs (52) arranged in staggered fashion (fig. 4)

With regards to claim 6: Wilson, previously modified by Jerit and Laven, further discloses the thickness of the panel (10), at regular intervals and parallel to its the vertical flanges (24, 26), reductions in thickness capable of acting as hinges in order to modify a longitudinal profile of said panel as desired (fig. 3 & 4).

With regards to claim 7: Wilson, in view of Jerit and Laven, further discloses the outer face having catching and positioning arrangements (A) on the upper part (fig. 5).

It is noted, that any part of the panel on the upper part serves as a catching and positioning arrangement as it can interact or couple with an attached item. The upper part, catching and positioning arrangement is capable of interacting with complementary arrangements of attached independent modifiable elements acting as gutters for the

pouring of a concrete for forming a peripheral upper anchorage after coupling of the various panels. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 8:, Wilson, in view of Jerit and Laven, further disclose the outer face has, over all of it's height, catching and positioning arrangements (A) (fig. 5). The catching and positioning arrangements is capable of interacting with complementary arrangements of at least one attached independent element acting as a vertical shaft, in communication with the anchorage elements, for pouring of a concrete. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 9 rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,590,493) in view of Jerit (US 3,667,187) and Laven (US 4,124,907), and in further view of Carling et al. (US 5,992,106)

With regards to claim 9: Wilson, previously modified by Jerit and Laven, discloses everything previously mentioned except the staggered fashion comprises a honeycomb. However, Carling et al. discloses a panel (10) having a plurality of ribs arranged in a staggered fashion in the form of honeycomb (M). Therefore, it would

have been obvious to one of ordinary skill in the art at the time of invention was made to modify the panel of Wilson, in view of Jerit and Laven, to include staggered fashion comprising honeycomb as taught by Carling et al. in order to provide a configuration for increased structural stability and integrity of the panel.

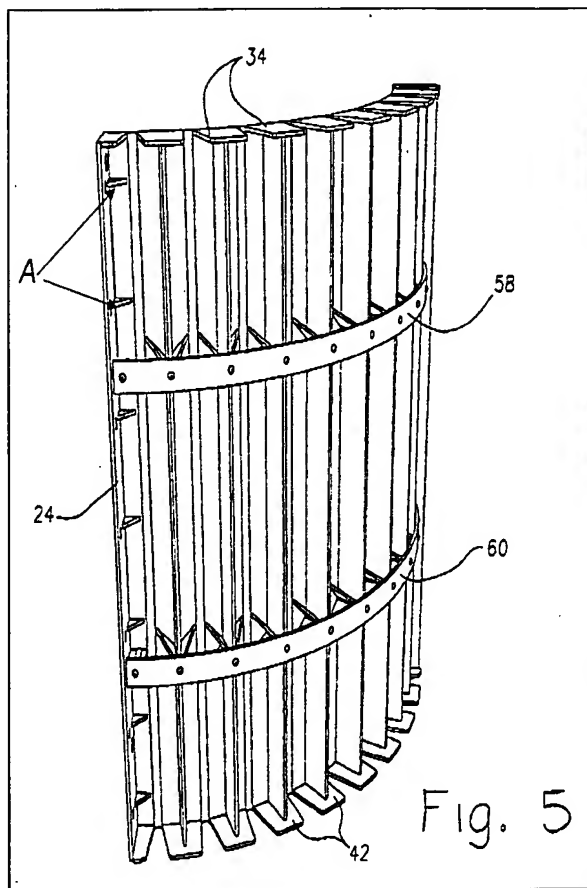


Fig. 5: Wilson (US 5,590,493)

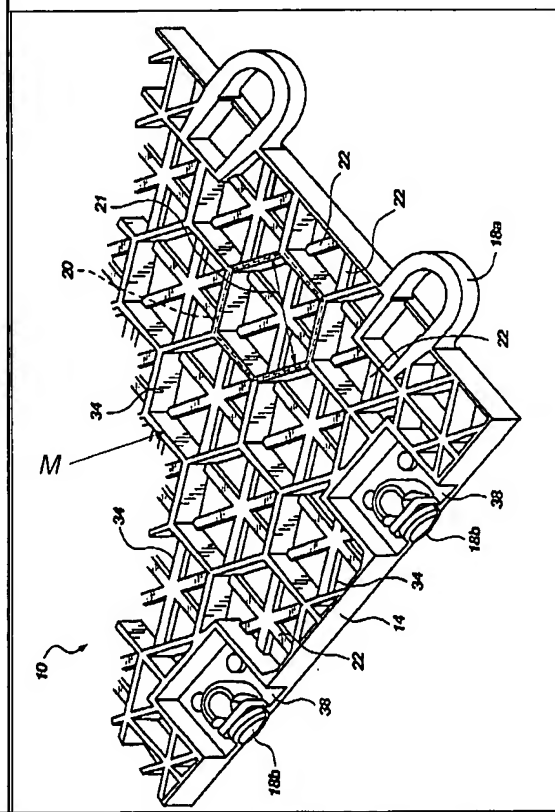


Fig. 2: Carling et al. (US 5,992,106)

Claims 10-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,590,493) in view of Jerit (US 3,667,187) and in further view Laven (US 4,124,907)

With regards to claim 10 and 11: Wilson discloses a method for fabricating a swimming pool panel comprising:

Wilson discloses a panel (10) having a prefabricated structure having a quadrangular general shape with a peripheral squared framework delimiting vertical assembly flanges (24, 26) and upper and lower horizontal flanges (34, 42) (fig. 1), wherein:

said panel (10) is made of plastic (polypropylene – col. 1, lines 57-62) having a thickness between 1/8" (0.31 mm) and 1/2" (12.7 mm), which falls within the approximate range of 7 to 8 mm, with a plurality of stiffening ribs (30) overhanging an outer face of the panel (10). It is further disclosed the base of the ribs (30) being approximately the same thickness as the panel (fig. 2). It would have been obvious to one of ordinary skill in the art to employ a thickness of 6 to 7 mm in order to provide thickness uniformity with the rest of the panel.

Wilson fails to disclose the length of the panel is between 1000 mm and 2000mm. However, Jerit discloses panel (10) for tank having a length of 74 inches (1879.6 mm) (col. 1, lines 37-38). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the panel of Jerit to panel having length between 1000mm and 2000mm as taught by Jeirt, in order to provide a panel that is sized for ease of transport, handling, and installation.

Wilson, previously modified by Jerit, discloses everything previously mentioned except for the upper horizontal flange has, in its thickness, a profiled groove. The engagement and the clamping of a protective sheet or liner covering an inner face of

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said panel is related to an intended use and is given little patentable weight. However, Laven discloses a upper horizontal flange, has in its thickness, profiled groove (150) for receiving the upper edge of a liner sheet (106) (fig. 11 and col. 6, line 66 – col. 7, line 2). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention is made to modify the panel of Jerit to include a profile groove within the thickness of the horizontal flange as taught by Lavan, in order to provide a means of securing pool liner.

Wilson, previously modified Jerit and Laven , fails to disclose the panel is formed by compression injection-moulding of a plastic. However, it well known in the art to form a panel by compression-injection moulding. As acknowledged by the applicant on page 3, lines 10-12 of the disclosure, the process of compression-injection moulding is well known.. Therefore, it would have been obvious to one of ordinary skill in the art the time of the invention was made to modify the panel of Wilson, previously modified Jerit and Laven, to have a panel made my compression-injection moulding in order to provide a structure will desired characteristics such as shape and thickness.

With regards to claim 12: Wilson, previously modified by Jerit and Laven, further disclose the vertical flanges (24, 26) have complementary arrangements (fig. 4), which is capable of coupling with adjacent panels in order to produce a closed structure of the pool. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 13: Wilson, previously modified by Jerit and Laven, further disclose the horizontal flange (42) has arrangements, which is capable of being engageable with anchoring members for anchoring in a ground portion. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 14: Wilson, previously modified by Jerit and Laven, further disclose the ribs (30) are formed vertically on the outer face of said panel (10) (fig. 1).

With regards to claim 15: Wilson, previously modified by Jerit and Laven, further disclose the horizontal upper edge of the outer face of said panel delimits a strip (52) formed from a plurality of ribs (52) arranged in staggered fashion (fig. 4)

With regards to claim 16: : Wilson, previously modified by Jerit and Laven, further discloses the thickness of the panel (10), at regular intervals and parallel to its the vertical flanges (24, 26), reductions in thickness capable of acting as hinges in order to modify a longitudinal profile of said panel as desired (fig. 4).

With regards to claim 17: Wilson, in view of Jerit and Laven, further discloses the outer face having catching and positioning arrangements (A) on the upper part (fig. 5).

It is noted, that any part of the panel on the upper part serves as a catching and positioning arrangement as it can interact or couple with an attached item. The upper part, catching and positioning arrangement is capable of interacting with complementary arrangements of attached independent modifiable elements acting as gutters for the

pouring of a concrete for forming a peripheral upper anchorage after coupling of the various panels. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

With regards to claim 18:, Wilson, in view of Jerit and Laven, further disclose the outer face has, over all of it's height, catching and positioning arrangements (A) (fig. 5). The catching and positioning arrangements is capable of interacting with complementary arrangements of at least one attached independent element acting as a vertical shaft, in communication with the anchorage elements, for pouring of a concrete. Note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Claim 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Wilson (US 5,590,493) in view of Jerit (US 3,667,187) and Laven (US 4,124,907), and in further view of Carling et al. (US 5,992,106)

With regards to claim 19: Wilson, previously modified by Jerit and Laven, discloses everything previously mentioned except the staggered fashion comprises a honeycomb. However, Carling et al. discloses a panel (10) having a plurality of ribs arranged in a staggered fashion in the form of honeycomb (M). Therefore, it would

have been obvious to one of ordinary skill in the art at the time of invention was made to modify the panel of Wilson, in view of Jerit and Laven, to include staggered fashion comprising honeycomb as taught by Carling et al. in order to provide a configuration for increased structural stability and integrity of the panel.

Response to Arguments

Applicant's arguments filed 10/26/07 have been fully considered but they are not persuasive.

As per claim 1, applicant argues that the prior art of record fails to disclose a compression injection-molding of recycled plastic. It is noted that the claim 1 is directed to a panel, the limitation of the panel being produced by compression injection moulding is a product by process limitation and therefore does not depend on the process of making.

In response to the applicant's argument that the prior art of record fails to disclose recycled plastic, Examiner notes that no unexpected results that would arise from the use of recycled plastic. One of ordinary skill in the art would recognize that the use of recycled plastic has the benefit of being environmentally friendly, but would not unexpectedly produce a panel that is different or unobvious from that of Wilson's.

Applicant further argues that stiffening ribs (30) of Wilson does no overhang an outer face of the panel. The Examiner disagrees, as the ribs extend from an outer face of the panel, therefore providing an overhang. (see figs. 1 and 2)

Applicant further argues the Wilson, Jerit, and Laven fail to disclose the compression injection molding of plastic. Examiner notes that applicant admitted on lines 10-13 of the disclosure that such a process is well known in the art. As such, it would to one of ordinary skill in the art to have a panel formed by compression injection molding in order to provide a panel structure with desired characteristics such as shape and thickness. Applicant's arguments regarding Desjoyaux are moot in view of the applicant's admission that compression injection moulding is well known in the art.

The objection to the specification is withdrawn in view of the amendment filed 10/26/07.

The rejection of claims 1-9 under 35 USC 112, second paragraph has been withdrawn in view of the amendment filed 10/26/07.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JESSIE FONSECA whose telephone number is (571)272-7195. The examiner can normally be reached on M-F 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Canfield can be reached on (571)272-6840. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. F./
Examiner, Art Unit 3633

Robert Canfield
Primary Examiner

